

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Insurance Agent  
License of Ronald B. Stark, License No.  
IN177409

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck on Wednesday, September 3, 1997, at 9:30 a.m. at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, in the City of Minneapolis, Minnesota. The record closed on October 29, 1997, upon receipt of the final written memorandum.

Patrick M. Driscoll, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Commerce. Mark D. Luther, Esq., Firststar Bank Building, Suite 408, 8800 Highway 7, Minneapolis, Minnesota 55426, appeared representing the Licensee, Ronald B. Stark.

**NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact David Gruenes, Commissioner, Department of Commerce, 133 E. 7th Street, St. Paul, Minnesota 55101, to ascertain the procedure for filing exceptions or presenting argument.

**STATEMENT OF ISSUE**

The issue in this contested case proceeding is whether or not disciplinary action should be taken against the insurance agent's license of the Licensee, or whether he should be subjected to civil penalties.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. Ronald B. Stark ("the Licensee" or "Mr. Stark") has been licensed as an insurance agent in the State of Minnesota since March 6, 1966. Since 1972, he has done business as the Minnesota Senior Citizens Insurance Agency.

2. In approximately early June of 1996, the Marquette Trust Company in Rochester, Minnesota, received a letter addressed to a deceased trust company customer. The letterhead indicated that the letter was from the "Minnesota Senior Citizens Agency" and asked for the addressee's date of birth and phone number in order to furnish her with information regarding long-term care insurance available from American Travelers. The letter was signed by "D. M. Harms" (Ex. A).<sup>[1]</sup> The return address on the envelope with the letter was "MSCIA, P.O. Box 5514, Hopkins, MN 55343". (Ex. A, p. 3).

3. About 10 years before, on November 10, 1986, the Licensee had submitted an application for a post office box in Hopkins, Minnesota, and was assigned Post Office Box Number 5514. (Ex. G).

4. Mr. Stark denies that he prepared or sent the letter to the Marquette Trust Company which is attached as Exhibit A.

5. The Licensee has a stepdaughter named Dana Harms, who is approximately 18 years old, and who lives with the Licensee and his wife.

6. The Licensee does approximately 95 percent of his business in the City of Rochester, Minnesota.

7. On May 28, 1996, the Licensee made a bulk mailing of 500 pieces from the Hopkins Post Office. The mailing weighed 15.1 pounds. The permit holder's name and address is shown as "Ron Stark, P.O. Box 5514, Hopkins, MN 55343". (Ex. M).

8. The Licensee sold approximately 15 to 20 long-term care policies for American Travelers beginning in August of 1995. He stopped selling the policies in November of 1996.

9. By a letter dated June 28, 1996, the Department wrote to the Licensee and sent him a copy of the letter received by the Marquette Trust Company with the addressee's name redacted. (Ex. C). The letter asked the Licensee to provide the Department with information concerning the Minnesota Senior Citizens Agency, D. M. Harms, information documenting the accuracy of the facts stated in the letter, the history and use of the letter, whether American Travelers had approved of the letter, and whether the Licensee intended to continue using the letter. The response was to be submitted by the Licensee within ten days of receipt of the Department's letter. (Ex. C).

10. The Licensee sent a memo to the Department dated July 16, 1996, which was received by the Department on July 18, 1996. (Ex. C). The memo did not provide any of the information requested by the Department, but instead made four requests. Mr. Stark asked that a copy of the complaint be provided to him, that information concerning the post office box be provided, that an unaltered copy of the letter sent to the trust company be provided (the addressee had been redacted), and he requested a copy of the rules cited in the Department's letter. (Ex. C).

11. The Department did not send the Licensee any of the items requested. It is the standard practice of the Department not to reveal the identity of a complainant in order to determine the accuracy of the information provided by the Licensee.

12. The Department then sent a letter to the Licensee dated August 6, 1996, which ordered him to appear at the Department on August 20, 1996, and to bring the information requested earlier. The Order to Appear advised the Licensee that he had failed to include the requested information in his July 16, 1996 letter and stated that a failure to appear as ordered or provide the required information would likely result in suspension or revocation of Mr. Stark's license. (Ex. D).

13. The certified receipt for the August 6, 1996 letter shows that it was received at Mr. Stark's address and signed for by Dana Harms. (Ex. H).

14. Mr. Stark sent a memo dated August 14, 1996, to the Department in which he stated he would not be able to appear on August 20, since he would not be in town. He also advised the Department that he would not give a statement, neither written or oral, until all of the information he requested in his July 16, 1996 memo was received. (Ex. E).

15. Sometime in the fall of 1996, an Assistant Attorney General representing the Department of Commerce wrote to Mr. Stark about his failure to appear as requested at the Department. The Licensee replied to the Assistant Attorney General in a memo dated December 27, 1996. Mr. Stark stated in the memo that:

I would like to get the matter behind me as well. But until I have the complete information which I have a legal rite (sic) to have I will not answer their request on this matter whether it is my mailing or not.

(Ex. F).

16. The Licensee has been the subject of disciplinary action by the Commissioner of Commerce on three occasions. On November 23, 1992, his license was suspended for two weeks because the Licensee failed to provide a financial disclosure form in sale of two living trusts and failed to respond to a letter from the Department. (Ex. J). Mr. Stark's license was also suspended on two prior occasions.

17. On August 10, 1995, Mr. Stark applied to the American Travelers Life Insurance Company to act as its agent. In response to the question, "Have you ever been subject to insurance regulatory disciplinary action?", he answered, "No". (Ex. I).

18. On May 10, 1995, Mr. Stark applied to the Bankers United Life Assurance Company for appointment as an agent. In response to the question, "Have you ever been refused an original or a renewal or had suspended or revoked any type of insurance license in any state?", he answered, "No". In response to the question, "Have any formal charges been filed with the insurance department of any state arising out of your activities in the insurance business, or have you ever been cited to appear before the insurance department of this or any other state for an infraction of the insurance laws or for unfair practices?", he answered, "No". (Ex. K).

19. On February 8, 1996, the Licensee applied to Allianz Life Insurance Company of North America for appointment as an agent. In response to the question,

"Have you ever had a professional license refused, revoked or suspended; or, have you ever been fined or otherwise reprimanded by the licensing authority from which you received a professional license?", he answered, "No". (Ex. L).

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Commissioner of Commerce and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027, and Minn. Stat. Ch. 60K.

2. The Department of Commerce gave proper notice of the hearing in this matter and fulfilled all relevant substantive and procedural requirements of law or rule.

3. The Department of Commerce has the burden to prove by a preponderance of the evidence the violation of rules and statutes as alleged in its Notice of and Order for Hearing.

4. Under Minn. Stat. § 45.027, subds. 6 and 7, the Commissioner has authority to suspend or revoke a license or censure the licensee and impose a civil penalty not to exceed \$2,000 per violation upon a licensee who violates any law or rule or order.

5. Under Minn. Stat. § 60K.11, subd. 1, the Commissioner has authority to deny, suspend or revoke an insurance agent license or to censure the licensee or to impose a civil penalty under § 45.027, subd. 6.

6. Under Minn. Stat. § 60K.11(v), a licensee may be disciplined for violating or failing to comply with any of the provisions of the insurance laws including chapter 45 or chapters 60A to 72A or any rule or order under those chapters.

7. Under Minn. R. pt. 2790.2200, violations of that chapter of rules subjects the violator to penalties described in Minn. Stat. Chapters. 45, 60A, and 62A.

8. Under Minn. R. pt. 2790.0400, subp. 4, advertisements and representations must be sufficiently complete and clear, under the circumstances in which they are made, to avoid deception or the capacity or tendency to mislead or deceive. Words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology, must not be used.

9. The Department has failed to prove that the Licensee violated Minn. R. pt. 2790.0400, subp. 4.

10. Under Minn. R. pt. 2790.0500, subp. 31, any advertisement must state clearly the insurance coverage being offered.

11. The Department has failed to prove that the Licensee violated Minn. R. pt. 2790.0500, subp. 31.

12. Under Minn. R. pt. 2790.0400, subp. 3, all information required to be disclosed in advertising must be set out clearly and conspicuously and may not be presented in an ambiguous fashion so as to be confusing or misleading.

13. The Department has failed to prove that the Licensee violated Minn. R. pt. 2790.0400, subp. 3.

14. Minn. R. pt. 2790.1500, subp. 1, provides that an advertisement relating to the dollar amounts of claims paid, the number of persons insured, or similar statistical information relating to any insurer or policy must not be used unless it accurately reflects all of the relevant facts. The rule also provides that the sources of all statistical information must be disclosed in the advertisement.

15. The Licensee violated Minn. R. pt. 2790.1500, subp. 1, by the conduct described in Findings of Fact Nos. 1-7.

16. Under Minn. Stat. § 60K.11, subd. 1(x), licensee may be disciplined if he has engaged in any fraudulent, coercive, deceptive or dishonest act or practice.

17. Under Minn. Stat. § 72A.20, subd. 18(b), an insurance agent may not engage in fraudulent, coercive, or dishonest practices in connection with the insurance business.

18. The Department has failed to prove that the Licensee violated Minn. Stat. §§ 60K.11, subd. 1(x), and 72A.20, subd. 18(b).

19. Minn. R. pt. 2790.2100, subp. 2, provides that an insurer shall require its agents preparing advertisements naming the insurer or its products to submit proposed advertisements to it for approval prior to use.

20. By the conduct described in Findings of Fact Nos. 1-7, the Licensee violated Minn. R. pt. 2790.2100, subp. 2.

21. Under Minn. Stat. § 45.027, subd. 1a., a licensee must comply with requests for information, documents, or other requests from the Department within the time specified in the request, or, if no time is specified, within 30 days of the mailing of the request by the Department. Licensees are also required by the statute to appear before the Commissioner when requested to do so and bring all documents or materials requested.

22. By the conduct described in Findings of Fact Nos. 9-15, the Licensee violated Minn. Stat. § 45.027, subd. 1a.

23. A licensee may be disciplined by the Commissioner if it is shown that he has engaged in an act or practice which demonstrates that the licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act as an insurance agent under Minn. Stat. § 60K.11(iii).

24. By the conduct described in Findings of Fact Nos. 16-19, the Licensee has violated Minn. Stat. § 60K.11, subd. 1(iii).

25. Under Minn. Stat. § 60K.14, subd. 1(c), no agent shall make any communication to a potential buyer that indicates or gives the impression that the agent is acting on behalf of a government agency.

26. The Department has failed to prove that the Licensee violated Minn. Stat. § 60K.14, subd. 1(c).

27. Minn. Stat. § 62A.37, subd. 2, provides that any false statement or representation printed on an insurance policy or on promotional literature that indicates that the policy has a connection with, is certified by or has the approval or endorsement of any agency of this state or of the United States of America is unlawful.

28. The Department has failed to prove that the Licensee violated Minn. Stat. § 62A.37, subd. 2.

29. The above Conclusions are arrived at for the reasons set out in the Memorandum which follows and which is incorporated into these Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS RESPECTFULLY RECOMMENDED that the Commissioner take disciplinary action against the insurance agent's license of Ronald B. Stark.

Dated this 7th day of November 1997.

---

GEORGE A. BECK  
Administrative Law Judge

Reported: Taped, no transcript prepared.

### **NOTICE**

Under to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

### **MEMORANDUM**

The Respondent has denied that he was involved in the preparation of the insurance solicitation attached to this recommended decision as Exhibit A and further asserts that the Department has failed to prove that he was involved in sending the circular. The Department's obligation is to prove its allegations by a preponderance of the evidence. As the Respondent points out, the Minnesota Supreme Court has observed that while the proper standard of proof is a preponderance of the evidence, it has also noted that "We trust that in all professional disciplinary matters, the finder of fact, bearing in mind the gravity of the decision to be made, will be persuaded only by evidence with heft." *In Re Wang*, 441 N.W.2d 484, 493-94 (Minn. 1989).

The evidence in this record indicates that the letter sent to a deceased trust company customer was sent on the letterhead of the "Minnesota Senior Citizens Agency", a name which the Respondent has used in the past and which is very similar to the name that he currently does business under, namely the "Minnesota Senior Citizens Insurance Agency". The letter was signed by "D.M. Harms" which happens to be the name of the Respondent's stepdaughter, who resides with the Respondent and his wife. Additionally, the Respondent admits that he made a bulk mailing of 500 pieces of mail shortly before the letter in question was received by the Marquette Trust

Company in Rochester. The Licensee does approximately 95 percent of his business in Rochester. The Respondent professes to have no recollection whatsoever of what he mailed on May 28, 1996. The return address on the letter mailed to the Marquette Trust Company has the Respondent's post office box in Hopkins, Minnesota. It is clearly more likely than not that the Respondent was responsible for this mailing. The evidence has sufficient heft to support the findings of fact arrived at in this disciplinary proceeding, especially in light of the Respondent's inability to explain his apparent involvement in this matter.

A Department of Commerce rule provides that advertisements must be sufficiently complete and clear to avoid deception or a tendency to mislead or deceive. The Department argues that Exhibit A violates this rule. However, the Department presented no testimony or argument to support this allegation beyond the mere conclusion that the rule was violated. The Department does suggest that a statement at paragraph number 2 on the letter, that neither Medicare nor a Medicare supplement insurance will pay for long-term care, is inaccurate, but the record does not contain evidence showing how it is inaccurate or what an accurate statement would be.

The Department also asserts that the solicitation attached as Exhibit A did not clearly state that insurance coverage was being offered. Again, the Department fails to offer testimony or argument as to why this is the case. Small lettering at the bottom of the solicitation specifically states, "This letter is for the intent to solicit insurance." The body of the letter discusses furnishing the addressee with "information regarding a program for long-term care, underwritten through American Travelers, which offers unlimited home health care and unlimited nursing home care at the lowest possible cost!" While the description in the letter might have been clearer, it has not been demonstrated that the rule has been violated.

Under Minn. Rule pt. 2790.0400, subp. 3, advertising information must be set out clearly. It may not be confusing or misleading. The Department does not explain either what information it believes is required to be set out in this advertising or what is confusing or misleading in the solicitation initiated by the Respondent.

The Department contends that the Respondent violated a rule which provides that the sources of all statistical information must be disclosed in the advertisement. Minn. Rule 2790.1500, subp. 1. The Respondent acknowledged at the hearing that a solicitation must contain the sources of its claims. Exhibit A, attached to this recommended decision, does not document the source of the "facts" it cites in paragraphs 1 through 5. The Department has therefore proved a violation of the rule.

The insurance statutes generally prohibit a fraudulent course of conduct or deceptive or dishonest acts or practices on the part of an insurance agent. The Department argues that distribution of the solicitation violates the statutory language in that the letter had a capacity to deceive or mislead. Since the Department has failed to demonstrate how the solicitation was deceptive or misleading, a violation of the statutes in question cannot be sustained.

A Department of Commerce rule provides that any advertisement naming an insurer or its products must be submitted to the insurer for approval prior to use. Minn. Rule pt. 2790.2100, subp. 2. The Respondent did not submit the letter in question to



American Travelers Life Insurance Company. The letter clearly mentions American Travelers. The Respondent has violated the rule in question by failing to submit it to American Travelers prior to use.

In order to permit enforcement of the statutes regulating insurance agents, the Legislature has provided the Commissioner with authority to obtain information from licensees and to require a licensee to appear before the Commissioner. The Findings of Fact establish that the Respondent simply refused to provide the information requested and refused to appear when asked to do so by the Commissioner, offering only the excuse that he would be out of town. The Respondent maintains that he did not ignore the request from the Department since he did reply to the Department. In effect, he argues that because the Department failed to provide him with the materials he requested, he had no obligation to respond to the Department. There is, of course, no basis for this argument in the statute. The Respondent simply failed to cooperate with the Department's investigation as he is required to do by statute.

The Department has proved that the Respondent made false statements on his agent applications with the American Travelers Insurance Company, the Bankers Life Assurance Company, and the Allianz Life Insurance Company, by denying that his license had ever been suspended or that he had been subject to disciplinary action. In fact, he has been the subject of disciplinary action on three occasions, including a two-week suspension in 1992. (Finding of Fact No. 16). The Respondent offered various excuses for this behavior such as that he believed disciplinary action did not include a suspension or that the suspension had slipped his mind or that he had completed the application in a fast manner. None of these explanations are convincing. The record supports a conclusion that the Respondent intentionally falsified these applications and as a result is untrustworthy to act as an insurance agent under Minn. Stat. § 60K.11(iii).

The insurance regulatory statutes prohibit a statement of representation printed on promotional literature indicating that the policy is connected with or approved by any agency of the state or the United States. The Department contends that the Respondent's use of the name "Minnesota Senior Citizens Agency" implies that a potential buyer is dealing with a governmental agency. As the Respondent points out there are a number of businesses in this state that use the term "Minnesota" without implying that there is any connection with the State of Minnesota. The disclaimer at the bottom of the letter denies any connection with any governmental agency. The Department has failed to prove this allegation.

It should be noted that the credibility of the testimony of the Respondent in this matter is seriously in doubt. While he admits mailing 500 pieces of bulk mail approximately a year and a half ago, he denies any memory of its content. He is unable to explain how his stepdaughter's name appears on the letter or why his post office box is shown as a return address. Instead, he merely denies any association with the solicitation. Additionally, he "stonewalled" the Department's investigation and it is clear that he falsified applications to insurance companies. The Department has proved the allegations sustained above by a preponderance of the evidence and that evidence has sufficient heft to support the violations found and to support disciplinary action against the insurance agent license of the Respondent.

Prior to the hearing, the Department filed a Motion for Partial Summary Disposition in this case asking that it be granted a decision in its favor on the issues of the Respondent's failure to cooperate in the investigation and his false answers on applications. Since the Respondent's reply to the motion was filed on August 22, 1997, three working days prior to the hearing, the parties elected to proceed with the hearing rather than continuing it and awaiting the outcome of the motion. Because these matters have been proved at the hearing and violations found, the motion is now moot.

G.A.B.

---

<sup>[1]</sup> A copy of the letter is attached to this proposed decision as Exhibit A and is incorporated into these Findings of Fact by reference.